

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DAVID EUGENE BAILEY,

Plaintiff,

vs.

RALPH SNEED,

Defendant.

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Case No. 4:10CV1191 JCH

ORDER

This matter is before the Court upon its Order to Show Cause (ECF No. 57). This case was originally filed on July 2, 2010. (ECF No. 1). On September 16, 2011, this Court ordered Plaintiff to show cause why he has not responded to Defendant's Motion for Summary Judgment (ECF No. 53) or Defendant's Motion to Dismiss for Discovery Abuse (ECF No. 56). Plaintiff was granted until Monday, September 26, 2011 to respond to this Court's Order to Show Cause, but Plaintiff has not filed any response.

In his Motion to Dismiss for Discovery Abuse, Defendant states that he properly noticed Plaintiff's deposition for August 23, 2011, but that Plaintiff refused to participate in the deposition. The Court considers Plaintiff's failure to participate in his deposition to be an abandonment of his case under Fed.R.Civ.P. 41(b). See Doe v. Cassel, 403 F.3d 986, 990 (8th Cir. 2005)(affirming district court's dismissal due to plaintiff's noncompliance with the district court's instructions). The Court dismisses Plaintiff's case for failure to prosecute.

Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss for Discovery Abuse (ECF No. 56) is **GRANTED** and Plaintiff's lawsuit is **DISMISSED**. All other pending motions are denied as moot.

Dated this 28th day of September, 2011.

/s/ Jean C. Hamilton

UNITED STATES DISTRICT JUDGE